

118 CMR 14.00: FILING OBJECTIONS AND ADMINISTRATIVE REVIEW

Section

14.01: Scope and Purpose

14.02: Objections Filed Regarding the Investigation Report

14.03: Objection Filed Pursuant to M.G.L. c. 66A

14.01: Scope and Purpose

118 CMR 14.00 governs the appeal process available to certain parties to a M.G.L. c. 19C investigation and the appeal process available to those persons whose data the Commission has in its files.

14.02: Objections Filed Regarding the Investigation Report

(1) Parties Who May File Objections. The identified victim, the identified abuser and a state agency, or their respective legal representatives, that are aggrieved by disposition of an investigation conducted pursuant to M.G.L. c. 19C may file with the Commission an objection to the conclusion contained in the M.G.L. c. 19C report, except for decisions regarding the assignment of an investigator or the deferral of an investigation pending investigation by outside authorities.

(2) Grounds for Objection. The grounds for filing such an objection are:

- (a) The investigation report is based on an investigation that was not conducted in accordance with 118 CMR 5.02(1);
- (b) The preponderance of evidence does not support the conclusions reached in the investigation report; or
- (c) The preponderance of evidence supports conclusions not reached by the investigation report

(3) Objections Process.

(a) Petition for Review.

- 1. An objecting party shall file a Petition For Review which:
 - a. shall be in writing;
 - b. shall set forth with specificity the reason(s) for the objection(s); and
 - c. shall be filed with the Executive Director of the Commission.
- 2. Said Petition for Review shall be filed with the Commission within ten calendar days of the petitioner's receipt of a copy of the investigation report from the Commission but in any case no later than six months of the issuance of the investigation report.

(b) Action Upon Petition for Review.

- 1. Within a reasonable time from the filing of the Petition for Review, the Executive Director shall:
 - a. render a decision in writing including a statement of the nature of the decision and the reasons underlying said decision; and
 - b. amend the M.G.L. c. 19C report if an objection(s) is found to be meritorious;
- 2. A decision rendered by the Executive Director shall be the final and conclusive determination of the issues raised by the filed objection(s) in each case.

(c) Time Frames. The time periods contemplated herein may be extended by the Executive Director for good cause shown. The Commission's good faith failure to meet the time frames set forth in 118 CMR 14.02(3)(c) shall not confer any rights, either expressly or impliedly, upon the petitioner.

14.03: Objections Filed Pursuant to M.G.L. c. 66A

(1) Objections by Data Subjects.

(a) A data subject who objects to the accuracy, completeness, pertinence, timeliness, relevance or dissemination of personal data held regarding him or her, may file an objection with the Commission.

14.03: continued

- (b) The objection:
 - 1. shall be in writing; and
 - 2. shall set forth with specificity the reason(s) for the objection; and
 - 3. shall be filed with the Executive Director of the Commission.

- (2) Response to Objections. Within 60 calendar days of receipt of an objection, the employee in charge of the Commission's personal data system shall:
 - (a) investigate the validity of the objection; and
 - (b) correct the data if the objection is found to be meritorious; or
 - (c) provide the data subject the opportunity to have a statement reflecting his view recorded and disseminated with the data in question if the objection is found to lack merit; and
 - (d) notify the data subject in writing of a decision and the reasons underlying said decision.

- (3) Appeal of an Adverse Decision to the Commission's Executive Director.
 - (a) Any data subject who wishes to challenge either a Commission denial of access to that person's own records pursuant to 118 CMR, or any decision of the person in charge of the Commission's personal data system issued pursuant to 118 CMR 14.03 may file a Petition for Review by the Executive Director of the Commission.
 - (b) Such petition shall be:
 - 1. in writing; and
 - 2. filed with the Executive Director of the Commission within 30 days of the data subject's receipt of notification of said denial or of the decision of the employee in charge of the Commission's personal data system.
 - (c) The Executive Director or his designee upon receipt of said Petition for Review shall:
 - 1. review the previous decisions and all preceding actions by the Commission in light of the original objection; and
 - 2. permit the petitioner, and any other party deemed by the Executive Director or his designee to be appropriate, to file written arguments on the issues raised by the petition; and
 - 3. review all the submitted evidence and arguments and within 90 calendar days of filing of the Petition for Review either:
 - a. find the objection meritorious and correct the data; or
 - b. find the objection to lack merit and provide the data subject the opportunity to have a statement reflecting his view recorded and disseminated with the data in question; and
 - 4. send written notification of the decision to the petitioner and the employee in charge of the Commission's personal data system, including a statement of the nature of the decision and the reasons therefor.
 - (d) A decision rendered by the Executive Director or his designee pursuant to 118 CMR 14.03(3) shall be the final and conclusive administrative determination of the issues in controversy in each case.

- (4) Time Frames. The time periods contemplated by 118 CMR 14.00 may be extended by the Executive Director or his designee for good cause shown. The Commission's good faith failure to meet the time frames set forth within 118 CMR 14.03 shall not confer any rights, either expressly or impliedly, upon the petitioner.

- (5) Judicial Relief. Any data subject who wishes to challenge any decision of the Executive Director of the Commission regarding personal data may seek judicial review of said decision pursuant to M.G.L. c. 214, § 3B. In the event of any civil action filed pursuant to M.G.L. c. 214, § 3B, the failure to exhaust available administrative remedies shall be an absolute defense.

REGULATORY AUTHORITY

118 CMR 14.00: M.G.L. c. 19C, §§ 3, 3(b), 3(g), 3(i); M.G.L. c. 66 and M.G.L. c. 66A.